

1 Kathleen Maylin (SBN 155371)
2 Cara Ching-Senaha (SBN 209467)
3 JACKSON LEWIS LLP
4 199 Fremont Street, 10th Floor
5 San Francisco, California 94105
6 Telephone: (415) 394-9400
7 Facsimile: (415) 394-9401

8 Attorneys for Defendants
9 NATIONAL RAILROAD PASSENGER
10 CORPORATION dba AMTRAK and JOE DEELY

11 UNITED STATES DISTRICT COURT
12
13 NORTHERN DISTRICT OF CALIFORNIA

14 JOHN EARL CAMPBELL,

15 Plaintiff,

16 v.

17 NATIONAL RAILROAD PASSENGER
18 CORPORATION dba AMTRAK, JOE DEELY,
19 and DOES 1-15, inclusive,

20 Defendants.

Case No. C05-05434 MJJ (EDL)

**SUPPLEMENTAL DECLARATION OF
CARA CHING-SENAHA IN SUPPORT
OF DEFENDANT NATIONAL
RAILROAD PASSENGER
CORPORATION'S REQUEST FOR
LEAVE TO FILE MOTION FOR
RECONSIDERATION OF ORDER RE
MOTIONS TO COMPEL**

[CONCURRENTLY FILED HERewith:
NOTICE OF SUPPLEMENTAL FILING
IN SUPPORT OF DEFENDANT
NATIONAL RAILROAD PASSENGER
CORPORATION'S REQUEST FOR
LEAVE TO FILE MOTION FOR
RECONSIDERATION OF ORDER RE
MOTIONS TO COMPEL]

Complaint Filed: 12/30/05
FAC Filed: 2/23/06
Trial: 7/23/2007

Hearing Date: May 1, 2007
Hearing Time: 9:00 a.m.
Dept.: Courtroom E, 15th Floor
Magistrate Judge Elizabeth D. Laporte

[L.R. 7-9(a), (b)]

1 I, Cara Ching-Senaha, declare on the basis of personal knowledge:

2 1. I am an attorney with the law firm of Jackson Lewis LLP, counsel of record for
3 Defendants NATIONAL RAILROAD PASSENGER CORPORATION dba AMTRAK and JOE
4 DEELY. I am licensed to practice law in the above-referenced district court. I make the
5 following statements based on personal knowledge.

6 2. I attended the discovery hearing before Magistrate Judge Elizabeth D. Laporte on
7 May 1, 2007 at 2:00 p.m.

8 3. Our office previously ordered a copy of the hearing transcript from the court
9 reporter who recorded the hearing.

10 4. Attached hereto as Exhibit A is a true and correct copy of the discovery hearing
11 transcript, which we received this morning excerpts from the court reporter.

12 Executed this 5th day of June, 2007 in San Francisco, California. I declare under penalty
13 of perjury under the laws of California and the United States of America that the foregoing is true
14 and correct.

15 
16 CARA CHING-SENAHA

17
18 H:\N\National Railroad Passenger Corp (40707)\Campbell (89560)\Pleadings\Motion for Reconsideration\CMC suppl declaration ISO
19 recon req 060507.doc
20
21
22
23
24
25
26
27
28

EXHIBIT A

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

5107RR

1

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3
4 JOHN EARL CAMPBELL,)
5 PLAINTIFF,)
6 VERSUS) CASE NO. C05-5434 MJJ(EDL)
7) MAY 1, 2007
8 NATIONAL RAILROAD) SAN FRANCISCO, CALIFORNIA
9 PASSENGER CORPORATION,)
10 DEFENDANT.)
11 _____)

12 BEFORE THE HONORABLE ELIZABETH D. LAPORTE
13 UNITED STATES DISTRICT COURT JUDGE

14 APPEARANCES:
15 FOR PLAINTIFF: PAMELA PRICE
(VIA TELEPHONE) ATTORNEY AT LAW
16 1611 TELEGRAPH AVENUE STE 1450
OAKLAND, CALIFORNIA 94612

17
18 FOR DEFENDANT: JACKSON LEWIS
BY: CARA CHING-SENAHA
19 ATTORNEY AT LAW
20 199 FREMONT STREET 10TH FL.
SAN FRANCISCO, CALIFORNIA 94105

21
22
23 REPORTED BY: JUANITA GONZALEZ
24 CSR NO. 3003
25

0

2

1 THE CLERK: CALLING CIVIL 05-5434, JOHN EARL CAMPBELL
2 VERSUS NATIONAL RAILROAD PASSENGER CORPORATION.

5107RR

3 YOUR APPEARANCES, PLEASE, COUNSEL.

4 MS. PRICE: (VIA TELEPHONE) PAMELA PRICE ON BEHALF OF
5 PLAINTIFF JOHN EARL CAMPBELL. GOOD AFTERNOON.

6 MS. CHING-SENAHA: CARA CHING-SENAHA ON BEHALF OF
7 NATIONAL RAILROAD PASSENGER CORPORATION AKA AMTRAK.

8 THE COURT: ALL RIGHT. NOW, YOU HAVE A LOT OF DISPUTES
9 AND I AM DISAPPOINTED THERE HASN'T BEEN THE ABILITY TO RESOLVE
10 THESE AFTER THE PRIOR SEVERAL MOTIONS. BUT HERE WE ARE AGAIN.
11 ARE YOU STILL FIGHTING OVER THE GEOGRAPHIC SCOPE?

12 MS. PRICE: I DON'T BELIEVE SO, YOUR HONOR. I THOUGHT
13 THE COURT HAD RESOLVED THAT WITH AN ORDER.

14 THE COURT: ALL RIGHT. IS INTERROGATORY ONE IN
15 DISPUTE, THE NUMBER OF COMPLAINTS --

16 MS. CHING-SENAHA: WELL, SOMETHING I WAS GOING TO SAY.
17 ACTUALLY, NO, I DON'T BELIEVE IT IS. YOUR HONOR ACTUALLY, AFTER
18 ALL THAT BRIEFING WAS DONE, YOUR HONOR MADE A RULING. I DON'T
19 BELIEVE IT'S IN DISPUTES.

20 THE COURT: OKAY. TELL ME WHAT IS IN DISPUTE, FIVE AND
21 SIX?

22 MS. PRICE: YES, YOUR HONOR, I BELIEVE SO. FIVE, SIX
23 NINE, 10, 11, 12, AND INTERROGATORIES -- EVERYTHING EXCEPT FOR
24 NUMBER ONE. I HAVE BEEN GETTING RESPONSES EVERYDAY. SO IF
25 COUNSEL COULD TELL US IF THERE HAS BEEN SOME SUPPLEMENTAL

□

3

1 RESPONSE I AM NOT AWARE OF.

2 MS. CHING-SENAHA: THERE IS NO SUPPLEMENTAL RESPONSE TO
3 THE INTERROGATORIES THAT IS THE SUBJECT OF THE SECOND MOTION TO
4 COMPEL AND THE SUBJECT THAT IS THE THIRD MOTION TO COMPEL, I
5 BELIEVE WE BRIEFED WHAT WAS MOOT AND WHAT IS STILL AT ISSUE.

5107RR

6 THE COURT: WELL, FIVE AND SIX IS THE TOTAL NUMBER OF
7 ASSISTING CONDUCTORS AND WHO AMONG THEM WERE AFRICAN AMERICAN
8 FROM '98 TO THE PRESENT. IN GENERAL, STATISTICAL INFORMATION
9 CAN BE RELEVANT TO NOT JUST IN DISPARATE IMPACT CASES, EVEN IN
10 DISPARATE TREATMENT CASES. NOW, WHETHER THE PLAINTIFF IS GOING
11 TO BE ABLE TO USE IT EFFECTIVELY WITHOUT AN EXPERT, I DON'T
12 KNOW. IT'S POSSIBLE. THEY MAY NEED TO CROSS-EXAMINE YOUR
13 EXPERT OR THERE MAY BE OTHER REASONS. GENERALLY SPEAKING, IT'S
14 RELEVANT.

15 MS CHING-SENAHA: MY UNDERSTANDING IS THAT NO EXPERT
16 HAS BEEN DESIGNATED BY EITHER SIDE AND THE ISSUE WITH RESPECT TO
17 FIVE AND SIX RELATES SPECIFICALLY TO ASSISTANT CONDUCTORS. MR.
18 CAMPBELL WAS PROMOTED TWICE AND WAS ABOVE AN ASSISTANT
19 CONDUCTOR. HIS ISSUE, AS I UNDERSTAND IT, PLED IN THE FIRST
20 AMENDED COMPLAINT, IS HIS LACK OF PROMOTION OR FAILURE TO BE
21 PROMOTED TO ENGINEER. THAT IS THE ISSUE THAT'S REALLY AT ISSUE
22 HERE.

23 THE COURT: SO ENGINEERS -- WHY DO YOU WANT ASSISTANT
24 CONDUCTORS?

25 MS. PRICE: BECAUSE THE DATA THAT WE HAVE, AS COUNSEL

□

4

1 IS WELL AWARE, MR. CAMPBELL'S COMPLAINT WAS THAT PEOPLE WHO
2 REPORTED TO HIM, WHO WERE ASSISTANT CONDUCTORS WHO HE TRAINED,
3 WERE PROMOTED TO ENGINEER. COUNSEL IS CORRECT, YES, YOU'RE
4 SUPPOSED TO BE A CONDUCTOR BEFORE YOU GET TO BE AN ENGINEER, BUT
5 THAT'S NOT WHAT'S HAPPENING. MOST OF THE PEOPLE THAT WE HAVE
6 IDENTIFIED AS COMPARATORS, SIMILARLY SITUATED PERSONS, HAVE BEEN
7 ASSISTANT CONDUCTORS THAT HE TRAINED, AND THEY WERE PROMOTED
8 WITHOUT HAVING TO BE CONDUCTORS.

9 SO IT'S VERY RELEVANT. THAT IS THE POOL FROM WHICH

5107RR

10 AMTRAK IS PROMOTING PEOPLE TO ENGINEERS. WE WOULD LIKE TO KNOW
11 HOW MANY THERE ARE TOTAL AND HOW MANY OF THOSE ARE
12 AFRICAN/AMERICANS.

13 MS. CHING-SENAHA: I UNDERSTAND COUNSEL TO BE TALKING
14 AGAIN ABOUT THE POOL FROM WHICH THE ENGINEERS ARE SELECTED. IN
15 OTHER WORDS, THE POOL OF APPLICANT ENGINEERS, NOT THE POOL OF
16 APPLICANT ASSISTANT CONDUCTORS. MR. CAMPBELL WAS PROMOTED
17 TWICE. HE WAS ASSISTANT CONDUCTOR FOR LESS THAN A YEAR, AND IN
18 1999 HE WAS NO LONGER ASSISTANT CONDUCTOR. SO I SUBMIT TO THE
19 COURT THAT THE RELEVANT POOL IS NOT ASSISTANT CONDUCTORS. MR.
20 CAMPBELL HAD LONG SURPASSED --

21 MS. PRICE: WELL, THE PEOPLE WHO WE HAVE IDENTIFIED AS
22 COMPARATORS WERE ASSISTANT CONDUCTORS. PEOPLE HE WAS TRAINING
23 WERE PROMOTED TO THE ENGINEER POSITION, AND HE WAS NOT PROMOTED.
24 THE RECORD SHOULD BE CLEAR ABOUT THAT.

25 MR. CAMPBELL BECAME A CONDUCTOR BY VIRTUE OF HIS UNION

□

5

1 SENIORITY. HE BID ON THE ASSISTANT CONDUCTOR POSITION AND THE
2 CONDUCTOR POSITION. HE TOOK A PAY CUT TO BECOME AN ASSISTANT
3 CONDUCTOR IN THE YARD; SO THERE WAS NO PROMOTIONAL PRACTICE BY
4 WHICH HE RECEIVED EITHER ONE OF THOSE POSITIONS, AND THAT'S NOT
5 HOW IT WORKS. YOU BID ON THEM. YOU HAVE SENIORITY, YOU GET IT.
6 IT'S A POSTED POSITION. THERE IS NO APPLICATION, INTERVIEW,
7 SELECTION PROCESS. IT'S A BID PROCESS.

8 THE COURT: MISS PRICE.

9 MS. PRICE: HE WAS NOT PROMOTED, TWICE.

10 THE COURT: MISS PRICE, I'M NOT GOING TO ALLOW YOU TO
11 APPEAR BY PHONE AGAIN. I CAN'T GET A WORD IN EDGEWISE, AND IF
12 YOU CONTINUE TO MAKE THE SAME POINT, AND I DON'T NEED IT MADE,

5107RR

13 AND YOU GO ON AT LENGTH, IT'S NOT VERY PRODUCTIVE.

14 MS. PRICE: YES, YOUR HONOR.

15 THE COURT: I MEAN, YOU'RE ONLY IN THE EAST BAY, YOU
16 KNOW.

17 MS. PRICE: UNDER THE BRIDGE.

18 THE COURT: ALL RIGHT. YOU DO HAVE A BETTER EXCUSE
19 NOW, BUT BART IS APPARENTLY RUNNING.

20 MS. PRICE: A LOT OF PEOPLE ON IT. I APPRECIATE BEING
21 ABLE TO APPEAR BY TELEPHONE, YOUR HONOR IN OPPOSITION TO THIS
22 MOTION FOR SUMMARY JUDGMENT, IT'S DUE TODAY, SO IF I SEEM
23 ARGUMENTATIVE, IT'S BECAUSE I'M WRITING THE MOTION AND I'M
24 DEFINITELY PASSIONATE ABOUT WHAT I AM SEEING IN TERMS OF THE
25 EVIDENCE.

□

6

1 THE COURT: TONE IT DOWN FOR THIS FORUM.

2 WELL, I HAVE TO GIVE THE PLAINTIFFS SOME ROOM FOR THEIR
3 THEORY OF THE CASE, WHICH MAY OR MAY NOT BE MISGUIDED, AT LEAST
4 IN YOUR VIEW. SO I AM GOING TO ALLOW THEM TO GET THAT DATA.
5 AS I SAID, IT'S HARD TO FOR ME TO TELL, BUT I AM NOT HERE TO
6 RULE ON THE MERITS. IT MAY BE THAT IT'S UNAVAILABLE TO THE
7 PLAINTIFF, BUT I DON'T THINK IT'S EXTREMELY BURDENSOME AND THEY
8 THINK IT'S RELEVANT, AND HAVE A THEORY OF RELEVANCE. SO I AM
9 GOING TO OVERRULE THAT OBJECTION. SO THAT'S TO FIVE AND SIX,
10 ASSISTANT CONDUCTORS.

11 SEVEN AND EIGHT ARE NO LONGER AN ISSUE, CORRECT?

12 MS. PRICE: CORRECT.

13 THE COURT: SO NINE HAS TO DO WITH ASSISTANT
14 CONDUCTORS.

15 MS. CHING-SENAHA: AGAIN, YOUR HONOR --

16 THE COURT: IT'S REALLY THE SAME ISSUE.

5107RR

17 MS CHING-SENAHA: YES, YOUR HONOR. IT'S THE SAME
18 RULING.

19 THE COURT: TEN IDENTIFIES THE AFRICAN AMERICA
20 CONDUCTORS WHO APPLIED FOR A POSITION AS ENGINEER. NOW, I AM
21 OVERRULING THE OBJECTION. IT EXCEEDS THE PERMISSIBLE NUMBER OF
22 INTERROGATORIES. IN GENERAL, THINGS THAT ARE ON A COMMON
23 SUBJECT COUNT AS ONE; AND IN ANY CASE, I THINK, PERSONALLY, THAT
24 UNLESS WE'RE TAKING ABOUT VERY EXCESSIVE, OVER 25, THE PARTIES
25 WORK THESE THING OUT AND NOT BURDEN THE COURT WITH COUNTING

7

1 INTERROGATORIES.

2 NOW, IS THERE ANY DIFFERENCE ON THE RELEVANCE ISSUE ON
3 THIS ONE?

4 MS CHING-SENAHA: NUMBER 10?

5 THE COURT: YES, FROM THE EARLIER ONES. IN OTHER
6 WORDS, IT SEEMS TO BE AS RELEVANT AS THE OTHER ONES. ANY REASON
7 WHY I SHOULD RULE DIFFERENTLY ON THIS?

8 MS. CHING-SENAHA: THE ONLY OBJECTION THAT I WOULD HAVE
9 TO THE PACIFIC DIVISION IS THE SAME OBJECTION YOUR HONOR
10 SUSTAINED ON APRIL 17; THAT IS THAT WE'RE LOOKING AT LOCATIONS
11 IN WHICH MR. CAMPBELL WAS INTERESTED AND APPLIED AND WHICH HE
12 TESTIFIED AT DEPOSITION HE APPLIED, WHICH IS OPEN. THAT'S THE
13 ONLY OBJECTION.

14 THE COURT: WHAT ABOUT THAT GEOGRAPHICAL ISSUE?

15 MS. PRICE: MR. CAMPBELL APPLIED FOR -- HE WAS
16 INTERVIEWED FOR A POSITION IN SAN JOSE. IT'S NOT ACCURATE THAT
17 HE WAS ONLY -- WELL, THERE WAS A PERIOD OF TIME WHERE
18 MR. CAMPBELL WAS THE PRIMARY CARETAKER FOR HIS MOTHER. THAT'S
19 WHAT HE TESTIFIED TO; THAT HE WAS NOT INTERESTED OUTSIDE OF

5107RR

20 OAKLAND BECAUSE HIS MOTHER WAS SICK. HIS MOTHER PASSED AWAY IN
21 NOVEMBER OF 2002 AND MR. CAMPBELL APPLIED FOR PROMOTION TWO
22 ADDITIONAL TIMES AFTER THAT. ONE OF THEM THAT HE WAS ACTUALLY
23 INTERVIEWED FOR A SAN JOSE POSITION. SO WHEN WE SAY -- I AM
24 PREPARED TO LIMIT THE SCOPE TO THE BAY AREA LOCATION. THAT
25 WOULD INCLUDE SAN JOSE, SACRAMENTO, AND OAKLAND.

0

8

1 THE COURT: I THINK THOSE ARE THE THREE WE HAD LAST
2 TIME.

3 MS. CHING-SENAHA: I JUST WANT TO POINT THE COURT TO
4 THE TRANSCRIPT OF MR. CAMPBELL'S DEPOSITION IN WHICH HE
5 ADMITTED, AT PAGE 45, LINE 9.

6 "ISN'T IT FAIR TO SAY THAT YOU WEREN'T INTERESTED IN A
7 POSITION OUTSIDE OF THE OAKLAND SITE?"

8 THERE IS AN OBJECTION.

9 "WITNESS: CORRECT."

10 "WHY IS THAT?"

11 HE GOES ON TO GIVE THE REASON THAT MISS PRICE STATED.
12 HOWEVER, HE NEVER TESTIFIED HE WAS INTERESTED IN ANY OTHER
13 LOCATION OTHER THAN OAKLAND, AND I THINK GIVEN THE PLAINTIFF'S
14 OWN TESTIMONY, THAT IS THE PROPER SCOPE.

15 THE COURT: HE ACTUALLY APPLIED AND WAS INTERVIEWED FOR
16 A DIFFERENT ONE.

17 MS. CHING-SENAHA: I DON'T BELIEVE HE WAS.

18 THE COURT: MISS PRICE?

19 MS. PRICE: YES, YOUR HONOR.

20 THE COURT: ARE YOU CERTAIN THAT HE IN FACT DID APPLY
21 FOR ANOTHER --

22 MS. PRICE: THAT HE WAS INTERVIEWED BY MARK COLLINS IN
23 SAN JOSE DURING THE TIME THAT HE ACTUALLY WAS ASSIGNED TO SAN

5107RR

24 FRANCISCO. MR. CAMPBELL WORKED FOR A YEAR IN SAN FRANCISCO AND
25 WOULD HAVE BEEN GLAD TO HAVE BEEN AN ENGINEER IN SAN FRANCISCO,

□

9

1 AND HE WENT TO SAN JOSE TO BE INTERVIEWED BY MARK COLLINS AT THE
2 TIME HE WAS WORKING IN SAN FRANCISCO IN 2003 AFTER HIS MOTHER
3 DIED.

4 THE COURT: WHAT'S THE RELEVANCE OF SACRAMENTO?

5 MS. PRICE: IT'S THE POSITION THAT THEY HAVE SAID WHEN
6 THEY INTERVIEW PEOPLE THEY CAN PUT THEM BASICALLY ANYWHERE,
7 UNLESS THE PERSON IS -- SACRAMENTO IS A POSITION THAT WHERE
8 PEOPLE WHO WERE SELECTED OUT OF THE 2004 POSITION THAT WENT,
9 WERE SENT TO SACRAMENTO. THE EVIDENCE THAT MR. CAMPBELL
10 ACTUALLY RECEIVED THE HIGHEST INTERVIEW SCORES IN THE 2004
11 SELECTION PROCESS -- SO HE COULD HAVE, IF THEY WERE REALLY --
12 IT'S OUR CONTENTION IF THINGS WERE BEING DONE FAIRLY, HE SHOULD
13 HAVE BEEN GIVEN HIS PICK OF WHERE HE WANTED TO GO.

14 I'M LOOKING AT MISS VENTERELLI'S DEPOSITION. THEY
15 FILLED FOUR POSITIONS IN SACRAMENTO -- FROM EXHIBIT 35, IT SHOWS
16 THAT FOUR PEOPLE OUT OF OAKLAND WERE ASSIGNED TO SACRAMENTO, AND
17 I BELIEVE THREE OF THOSE PEOPLE, MR. CAMPBELL TRAINED.

18 THE COURT: WELL, I'M GOING TO ALLOW THE BAY AREA
19 LOCATIONS.

20 MS. CHING-SENAHA: I DO WANT TO RESPOND TO WHAT I THINK
21 IS A LIBERAL, IF NOT SOMETHING ELSE, INTERPRETATION OF THE
22 RECORD. THAT WASN'T THE TESTIMONY ABOUT PLACEMENT OF
23 INDIVIDUALS. EACH POSITION THAT IS POSTED FOR THAT LOCATION
24 MUST BE FILLED WITH APPLICANTS WHO APPLY FOR THAT POSITION. SO
25 IF SOMEONE APPLIED FOR ONLY SAN JOSE, THEY WOULD ONLY BE

5107RR

10

1 CONSIDERED FOR SAN JOSE.

2 THE COURT: BOTH OF YOU -- I'M NOT GOING TO BE RULING
3 ON THE MERITS, SO I THINK --

4 MS CHING-SENAHA: I THINK IT AFFECTS THE SCOPE. THAT'S
5 WHY I'M CONCERNED ABOUT THESE -- MISS PRICE IS NOW TESTIFYING --
6 AND THERE IS NO POINTING TO THE RECORDS OF WHERE THIS IS.

7 THE COURT: OKAY. MY RULING STANDS. ALL RIGHT. WHAT
8 NOW ARE WE ON? WE HAVE JUST TONS OF THINGS THAT YOU ALL DID NOT
9 RESOLVE THAT I'M TRYING TO GET THROUGH.

10 MS. CHING-SENAHA: THERE WAS NO ATTEMPT TO RESOLVE.
11 THAT'S THE POINT BROUGHT UP IN OUR PAPERS. THE FIRST POINT IS
12 THAT THERE WAS NO ATTEMPT TO MEET AND CONFER. WE RECEIVED A
13 LETTER A DAY BEFORE THE MOTION WAS FILED.

14 THE COURT: MISS PRICE.

15 MS. PRICE: I CALLED THEM, YOUR HONOR. THEY WENT ON
16 VACATION. THEY TOLD ME MISS MAYLIN WOULD BE BACK. MR. OSBORNE
17 IS IN THE CASE. HE WOULDN'T RESPOND TO ME. NOBODY RESPONDED.

18 MS. CHING-SENAHA: I WENT ON VACATION THE DAY THE
19 MOTION WAS FILED.

20 THE COURT: WELL, ALL RIGHT. THERE IS A LOT OF
21 FRUSTRATION. I DON'T WANT TO BE IN A POSITION OF SHARING THE
22 PARTIES' FRUSTRATION. SO YOUR POINT MAY BE RIGHT, BUT I'M GOING
23 TO FOLLOW THROUGH ON THE MERITS AND TRY TO GET THIS OVERWITH.

24 SO WHAT NUMBER ARE WE ON?

25 MS. PRICE: 11 AND 12, YOUR HONOR. IT ASKS FOR THE

11

1 TERMINATION OF ASSISTANT CONDUCTORS BY RACE. 12 ASKS FOR THE
2 TERMINATION OF AFRICAN AMERICAN ENGINEERS.

5107RR

3 MS CHING-SENAHA: BASICALLY EVERYONE WHO HAS EVER BEEN
4 FIRED FROM AMTRAK FOR THE LAST 10 YEARS.

5 THE COURT: ONLY IF THEY'RE AFRICAN/AMERICAN, OR
6 EVERYBODY?

7 MS. PRICE: PRESUMABLY THEY FIRED PEOPLE OTHER THAN
8 ASSISTANCE CONDUCTORS. ELEVEN ASK THEM TO LIST, BY RACE ONLY,
9 ALL ASSISTANCE CONDUCTORS TERMINATED.

10 THE COURT: INVOLUNTARILY. WHY FROM '95?

11 MS. PRICE: MR. CAMPBELL HAS BEEN THERE SINCE 1990 --
12 HE HAS BEEN IN THERE SINCE '98, BUT IT'S OUR CONTENTION THAT
13 THIS PROBLEM DATES FROM AT LEAST 1995, AND WE INTEND TO PRESENT
14 EVIDENCE OF THAT.:

15 MS. CHING-SENAHA: WELL, I BELIEVE, YOUR HONOR, WHEN WE
16 LAST ADDRESSED THIS ISSUE, MISS PRICE ARGUED THAT IT WAS BECAUSE
17 THERE WAS A PARTICULAR INDIVIDUAL, JOE DEELY, WHO ALSO IS AN
18 INDIVIDUAL DEFENDANT IN THIS CASE, AND THAT IT WAS BECAUSE OF
19 HIS PRESENCE AS GENERAL SUPERINTENDENT THAT THERE WERE ALL THESE
20 ALLEGED PATTERNS WITH RESPECT TO HIRING AND FIRING. HOWEVER,
21 MR. DEELY WAS NOT GENERAL SUPERINTENDENT UNTIL NOVEMBER 2002,
22 AND NOW THAT THAT FACT DOESN'T FIT MISS PRICE'S THEORY, SHE WENT
23 BACK TO ANOTHER THEORY TAKING IT BACK TO '95.

24 THE COURT: WELL, ALL RIGHT. SHE IS TRYING TO GET THE
25 STATISTICS WITHOUT IDENTIFYING INDIVIDUALS. SO THE OBJECTION IS

□

12

1 OVERRULED AND THE NUMBER OF INTERROGATORIES IS OVERRULED. SO I
2 THINK IT SHOULD JUST BE THE STATISTICS AND THE RELEVANT TIME
3 PERIOD, BUT I'M NOT CLEAR THAT YOU NEED TO GO BACK TO '95. I
4 THINK 12 ASKS FOR JANUARY '98, DOESN'T IT?

5 MS. PRICE: YES, YOUR HONOR.

5107RR

6 THE COURT: SO LET'S GO FROM JANUARY '98.

7 MS. CHING-SENAHA: ARE WE TALKING ABOUT THE SAME
8 GEOGRAPHIC LOCATIONS?

9 THE COURT SAME GEOGRAPHICAL LOCATIONS, CORRECT?

10 MS. PRICE: YES, YOUR HONOR.

11 THE COURT: SO 13 TO 17 FIRST -- DECIDED TO HIRE AND
12 PROMOTE 24 DIFFERENT PEOPLE TO ENGINEER.

13 NOW, DID YOU PROVIDE THAT INFORMATION THROUGH
14 DOCUMENTS? IS THAT WHAT YOU'RE SAYING?

15 MS. CHING-SENAHA: AMTRAK PROVIDED THE ACTUAL APPLICANT
16 FILES AND EVERYTHING ASSOCIATED WITH THOSE APPLICATIONS, WHICH
17 WOULD INCLUDE THE SIGNED OFF OF THE PERSON WHO MAKES THE
18 DECISION TO HIRE THAT PARTICULAR ENGINEER. SO ALL THESE
19 DOCUMENTS ARE ALREADY IN MISS PRICE'S POSSESSION AND I DON'T
20 THINK THERE IS ANY OTHER WAY TO COLLECT THAT INFORMATION SHORT
21 OF GOING THROUGH IT ONE BY ONE AS, PRESUMABLY, MISS PRICED HAS
22 ALREADY DONE.

23 THE COURT: CAN YOU GIVE HER BATES RANGES?

24 MS. CHING-SENAHA: THERE IS OVER 10,000 PAGES.

25 THE COURT: WELL, MISS PRICE, HAVE YOU LOOKED THROUGH

□

13

1 THAT?

2 MS. PRICE: YEAH. SHE IS RIGHT. THEY GAVE US 10,000
3 PAGES WITHOUT ANY KIND OF PLEADING, RESPONSE, ANYTHING. AND WE
4 HAVE GONE THROUGH THEM AS BEST WE CAN, BUT IT'S OBVIOUSLY
5 OVERWHELMING AND IS CONFUSING AND YOU DON'T KNOW WHEN YOU FOUND
6 EVERYTHING OR NOT.

7 MS. CHING-SENAHA: WELL, UNFORTUNATELY, THAT IS THE
8 ONLY WAY -- IT'S EQUALLY BURDENSOME ---

9 THE COURT: IF IT'S PARTICULARLY BURDENSOME, THEN I AM
Page 11

5107RR

10 NOT GOING TO ORDER IT, BUT --

11 MS. PRICE: WELL, YOUR HONOR, THEY PUT IT TOGETHER.
12 THEY KNEW WHEN THEY PUT IT TOGETHER WHAT THEY WERE PUTTING
13 TOGETHER. THEY COULD HAVE EASILY IDENTIFIED THESE DOCUMENTS AS
14 OPPOSED TO JUST PUTTING THEM ALL IN A BOX. SOME OF THEM ARE NOT
15 ALWAYS IN ORDER, AND THEY JUST GIVE IT TO US.

16 THE COURT: YOU HAVE TO EITHER LABEL THEM ACCORDING TO
17 HOW THEY'RE KEPT IN THE USUAL COURSE OF BUSINESS. IF YOU DIDN'T
18 DO THAT, PROVIDE IT MORE. IF YOU HAVE A SPECIFIC QUESTION, THEN
19 YOU SHOULD MEET AND CONFER ABOUT THAT AND SEE IF YOU CAN GET
20 SOME GUIDANCE, MISS PRICE. OTHERWISE, DENIED.

21 THE COURT: NUMBER 18.

22 MS. CHING-SENAHA: THEY'RE ALL THE SAME.

23 THE COURT: SAME ISSUE, SO SAME RULING. ALL RIGHT.

24 NOW WE STILL HAVE DOCUMENT REQUESTS.

25 MS. CHING-SENAHA: YES, YOUR HONOR.

14

1 MS. PRICE: THE INFORMATION THAT COUNSEL IS REFERRING
2 TO THAT I THINK THAT I HAVE, DOES NOT INCLUDE -- THERE IS
3 ANOTHER LAYER OF DECISIONS THAT WE APPARENTLY HAVE BEEN -- HAS
4 BEEN EXPLAINED TO US WHAT COUNSEL DESCRIBED IN THOSE DOCUMENTS,
5 WHICH WE'VE SEEN, ARE THE PANEL INTERVIEW BOOKLETS. BUT WHAT
6 MISS VETERELLI TESTIFIED TO --SHE'S THEIR H.R. PERSON -- IS THAT
7 AFTER SHE DOES THAT, AFTER THE PANEL INTERVIEWS THEM, THAT THEN
8 THE SUPERINTENDENTS, ONE OR MORE OF THEM, MAKE THE DECISION. SO
9 I DON'T HAVE DOCUMENTS THAT SHOW ME, FOR INSTANCE, WHO WAS --
10 WHO MADE THE ULTIMATE DECISION TO HIRE MR. OLEMAN OR ANY OF
11 THESE INDIVIDUALS. I BELIEVE ARE THE INTERVIEW BOOKLET.

12 MS. CHING-SENAHA: I BELIEVE IT GOES BEYOND THE

5107RR

13 INTERVIEW BOOKLETS. IT ALSO INCLUDES THE FINAL DECISION-MAKING
14 PAPERWORK THAT'S SIGNED OFF, AND UNDER THAT IT'S PRINTED. SO
15 EVEN IF YOU CAN'T READ THE SIGNATURE, IT'S THERE. I BELIEVE
16 THERE'S OTHER ADDITIONAL INFORMATION, INCLUDING BACKGROUND CHECK
17 FORMS, E-MAILS ABOUT PROSPECTIVE CANDIDATES. THAT IS ALL IN THE
18 10,000 PAGES PRODUCED AUGUST OF LAST YEAR.

19 MS. PRICE: WE HAVE NOT FOUND THAT CONSISTENTLY AT ALL.

20 MS. CHING-SENAHA: I DON'T KNOW THAT.

21 MS. PRICE: AND, AGAIN, THEY JUST SENT \$10,000
22 DOCUMENTS.

23 THE COURT: MISS PRICE. MISS PRICE. YOU'RE TALKING
24 OVER OTHER PEOPLE. THE COURT REPORTER CAN'T DO IT. I CAN'T GET
25 A WORD IN EDGEWISE. THIS PHONE APPEARANCE IS NOT WORKING VERY

15

1 WELL.

2 MS. PRICE: SORRY.

3 THE COURT: ALL RIGHT. DENIED.

4 18 IS THE SAME. NOW WE'RE ON DOCUMENTS.

5 MS. CHING-SENAHA: YES, YOUR HONOR.

6 THE COURT: OKAY. I THINK I RULED ON 17. DID I? YES.
7 THE DEELY FILE. WHAT IS STILL AT ISSUE?

8 MS. PRICE: THEY'VE GIVEN US 18, 19 -- I THINK I GOT
9 YESTERDAY 18, 19, 20, 21. I DON'T BELIEVE I GOT -- COUNSEL,
10 AGAIN, CORRECT ME IF I'M WRONG. I DON'T THINK I HAVE A RESPONSE
11 TO 22, 23, 24, THROUGH THE END OF THIS.

12 MS CHING-SENAHA: CORRECT. WE DID NOT SUPPLEMENT OUR
13 RESPONSES TO THE DOCUMENTS. THESE ARE DOCUMENT REQUESTS.

14 THE COURT: ARE THESE PARALLEL TO THE INTERROGATORIES
15 THAT I ALREADY RULED ON?

16 MS. CHING-SENAHA: THEY ARE. HOWEVER, THEY'RE MUCH
Page 13

5107RR

17 MORE BURDENSOME. THE REASON WHY -- NOT JUST ASKING FOR A NUMBER
18 OF INDIVIDUALS WHO APPLY FOR A PARTICULAR POSITION. IT'S
19 ACTUALLY ASKING FOR EVERY SINGLE RECORD RELATED TO EVERY SINGLE
20 PERSON EVER HIRED FOR THE LAST 10 YEARS.

21 THE COURT: THEN THAT WOULD BE OVERBROAD. WE ALREADY
22 NARROWED THE GEOGRAPHIC SCOPE. IS THERE SOME OTHER APPROPRIATE
23 NARROWING THAT SHOULD BE DONE?

24 MS. CHING-SENAHA: WELL, I THINK, YOUR HONOR, THERE
25 NEEDS TO BE A MORE SIGNIFICANT AND STRONGER BASIS TO JUSTIFY THE

16

1 PRODUCTION OF HUNDREDS OF VARIOUS APPLICATIONS BEYOND WHAT'S
2 ALREADY BEEN PRODUCED. AS MISS PRICE SAID, WE PRODUCED IN
3 EXCESS OF 10,000 PAGES, BECAUSE MISS PRICE ASKED FOR EVERY
4 SINGLE APPLICATION FOR A TEN-YEAR TIME PERIOD.

5 THE COURT: WHY SHOULDN'T THIS BE MODIFIED TO SUBMIT
6 DOCUMENTS SUFFICIENT TO SHOW THE RELEVANT ISSUES?

7 MS. PRICE: 22, FOR INSTANCE, IS NOT FOR 10 YEARS.
8 IT'S SINCE JANUARY OF 1998. WE'RE ASKING THEM TO GIVE US THE
9 APPLICATION OF EACH AFRICAN AMERICAN CONDUCTOR WHO APPLIED FOR
10 AN ENGINEER POSITION. WE DON'T THINK THERE ARE THAT MANY, BUT
11 WE DON'T KNOW.

12 MS. CHING-SENAHA: A PERFECT EXAMPLE WOULD BE THAT THE
13 10,000 PLUS, THEY ONLY SEE A SPECIFIC GEOGRAPHIC LOCATION WHERE
14 MR. CAMPBELL APPLIED. TIMES THAT IS FOUR OR FIVE, ANOTHER FORTY
15 OR FIFTY THOUSAND PAGES.

16 THE COURT: SO THAT'S TOO MUCH. I'M GOING TO ORDER YOU
17 TO MEET AND CONFER AND REACH AN AGREEMENT. THERE IS RELEVANCE,
18 BUT THERE IS OVER-BREADTH.

19 MS. PRICE: I APPRECIATE THAT, YOUR HONOR. I WASN'T

5107RR

20 AWARE THAT THERE WERE THAT MANY AFRICAN AMERICAN CONDUCTORS WHO
21 APPLIED FOR ENGINEERS, THAT IT WOULD BE FORTY, 50,000 PAGES.

22 MS. CHING-SENAHA: SOME WOULD HAVE TO GO --

23 THE COURT: OKAY. KNOW, THIS KIND OF BICKERING TONE IS
24 UNPLEASANT TO THE COURT AND I JUST ISSUED AN ORDER SAYING YOU
25 MEET AND CONFER ON THIS. I AM ONLY GRANTING IN PART ONLY TO THE

□

17

1 EXTENT IT'S RELEVANT; BUT IT NEEDS TO BE SIGNIFICANTLY NARROWED
2 SO IT'S NOT UNDULY BURDENSOME AS CURRENTLY. I HAVE GIVEN YOU
3 GUIDELINES ON NARROWING, BUT THE DEFENDANT HAS TO COME UP WITH
4 MORE COMPELLING REASONS ABOUT HOW MANY DOCUMENTS, NOT JUST
5 GENERALITIES, NO DUMPING THE DOCUMENTS WITHOUT THEM BEING
6 ORGANIZED. I DON'T KNOW IF IT'S BEEN DONE OR NOT, BUT I'M
7 SAYING THAT.

8 ANYTHING FURTHER?

9 MS. PRICE: SO THE ORDER IS AS TO 22 THROUGH 29, YOUR
10 HONOR?

11 MS CHING-SENAHA: 28.

12 MS. PRICE: 28 IS ACTUALLY WHERE THEY CUT OFF.

13 THE COURT: 28.

14 MS. PRICE: 29 IS SEPARATE. PERHAPS WE CAN TALK ABOUT
15 THAT.

16 THE COURT: BRIEFLY.

17 I AM NOT GOING TO HAVE ANOTHER TELEPHONE APPEARANCE.

18 MS. PRICE: WELL, I GUESS --

19 THE COURT: I THOUGHT YOU HAD AGREED TO COMPROMISE ON
20 29.

21 MS. PRICE: I THOUGHT THAT I HAD A COMPROMISE, BUT THEN
22 IT DIDN'T -- I THINK IT ULTIMATELY DIDN'T WORK OUT.

23 THE COURT: THE UNUSUAL INCIDENT REPORT?

5107RR

24 MS. CHING-SENAHA: I BELIEVE THAT WAS A COMPROMISE AND
25 I BELIEVE THAT INFORMATION IS STILL BEING COMPILED.

□

18

1 THE COURT: THE UNUSUAL INCIDENT REPORT SO IT'S AS THE
2 PARTIES HAVE AGREED. AND NUMBER THIRTY IS NOT IN THE SEPARATE
3 STATEMENT OF ISSUES, SO I THINK IT'S MOOT. SO WE'RE FINISHED.
4 ALL RIGHT.

5 MS. PRICE: CAN WE HAVE A DATE FOR COMPLIANCE WITH THE
6 ONES THAT YOU HAVE ORDERED, PLEASE.

7 THE COURT: WHEN?

8 MS. CHING-SENAHA: NEXT WEEK BEING THE PERIOD FOR
9 DEFENDANTS TO PREPARE THEIR REPLY TO TWO SEPARATE MOTIONS FOR
10 SUMMARY JUDGMENT, IT'S PROBABLY GOING TO HAVE TO BE THREE WEEKS
11 AFTER THAT. WE'RE TALKING ABOUT TENS OF LOCATIONS.

12 THE COURT: SO, IN OTHER WORDS, FOUR WEEKS TOTAL IS
13 WHAT YOU'RE ASKING FOR.

14 MS. CHING-SENAHA: YES.

15 THE COURT: FOUR WEEKS. ALL RIGHT. THANK YOU.

16

17

18

19

20

21

22

23

24

25

5107RR

19

1

2

3

4

5

6

7

8

9

I CERTIFY THAT THE FOREGOING IS A TRUE AND ACCURATE
TRANSCRIPT OF THE PROCEEDINGS HELD IN THE ABOVE-ENTITLED MATTER.

10

11

12

13

14

15

16

17

18

JUANITA GONZALEZ

CSR NO. 3003

21

22

23

24

25